

Exhibit B



COMMONWEALTH of VIRGINIA

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July 15, 2016

VIA U.S. Mail

Director, Office of Information Policy (OIP)
United States Department of Justice
Suite 11050
1425 New York Avenue, NW
Washington, D.C., 20530-0001

RE: Freedom of Information Act Appeal – FOIPA Request No.: 1345369-000
Subject - FBI Allele Frequency Database

Dear OIP Director:

I write to appeal the denial of my February 18, 2016 FOIA request for information on the corrected genotypes used to generate the FBI allele frequency database (No. 1345369-000). Your May 17, 2016 letter denying my request states that the requested “material is being withheld in its entirety by the FBI pursuant to [Title 5, U.S. Code, Section 552] subsections (b)(6) and (b)(7)(C) (2006 & Supp. IV (2010)).” The letter further cites 5 U.S.C. § 552(c) for the proposition that “three discrete categories of law enforcement and national security records” are exempt from FOIA disclosure. I am appealing the denial because the stated subsections are inapplicable to this FOIA request. No requested materials contain personal information that could “constitute an unwarranted invasion of personal privacy,” nor do any of the records sought relate to any ongoing criminal investigation.

My request seeks no personal information connectible to any individual; I seek only the anonymized profiles of genotypes used to correct the inaccuracies of the 1999/2001 genotype set. The nature of these anonymized profiles is no different from that of the 1999/2001 data set made readily available online by the FBI. By fact of their anonymity, the genotype profiles I seek in my request cannot constitute an invasion of personal privacy if disclosed, a fact evidenced by the FBI’s regular disclosure of similarly created genotype profiles and further evidenced by widespread disclosure of other anonymous genotype profiles by other government agencies. The National Institute of Standards and Technology, for example, has published 1,000 additional anonymous genotypes similar to those here sought. *See*, <http://www.cstl.nist.gov/strbase/BISTpop.htm>. Additionally, non-profit and education organizations and institutions have published far larger and non-anonymized datasets of

genotypes with no known negative consequences to any individuals whose genotype profiles have been included. (See, e.g., <http://www.1000genomes.org>, <http://evs.gs.washington.edu/EVS/>, and <http://exac.broadinstitute.org>.)

Because this request seeks no personal information or material related to an ongoing criminal investigation, and because these materials are properly subject to disclosure under FOIA, I appeal the initial denial of my request and ask that the materials be provided to me in electronic or paper format within 20 days. I will provide up to \$25 in fees for the production of these materials. Please notify me if production costs will be more than \$25. I seek these materials for personal and not commercial use.

Please send the requested information to:

Edward J. Ungvarsky, Capital Defender
Northern Virginia Capital Defender Office
2300 Clarendon Blvd., Ste. 201-B
Arlington, VA 22201

I can be reached at (703) 875-0103 or at eungvarsky@cdn.idc.virginia.gov with further questions.

Thank you for your assistance in this matter.

Regards,

Edward. J. Ungvarsky
Capital Defender